

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-42166 of 2014
Date of Decision: 01.10.2015.**

Kamlesh

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mukesh Rao, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Yogesh Chaudhary, Advocate
for the accused.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 24.9.2014 (Annexure P-3) passed by the Trial Court whereby application moved by the petitioner under Section 173(8) Cr.P.C., was disposed of.

Learned counsel for the petitioner has submitted that the Trial Court has erred in interpreting the order passed by the Apex Court while passing the impugned order.

Learned counsel for the accused, on the other hand, has submitted that before the Apex Court it was projected by the petitioner that she only wanted to produce the report of P.G.I. and the said plea was not objected by the accused and the order passed by this Court dated 29.7.2013 was modified by the Apex

Court vide order Annexure P-2.

In the present case, accused Jaipal and Gurdev Singh are facing trial under Section 304-B of the Indian Penal Code, 1860. Sonia, wife of accused Jaipal, had died an unnatural death within seven years of her marriage.

After completion of investigation and necessary formalities, challan was presented against the accused.

During the pendency of the trial, petitioner moved an application under Section 173(8) Cr.P.C. seeking further investigation of the matter requesting to include 15 other persons as accused. The said application was dismissed by the Trial Court. The order passed by the Trial Court was challenged by the petitioner by way of Criminal Miscellaneous-M-28796 of 2012. The said petition was disposed of by this Court vide order dated 2.5.2013 (Annexure P-1). The operative part of the said order reads as under:-

“In view of above circumstances, this petition is disposed of with a direction that the report Annexure P-4, if it is not part of the record can be summoned in case an application under Section 91 Cr.P.C., is filed by the petitioner-complainant. If the said report is already part of the record, the trial Court will consider the said report as evidence being report of Government Scientific Expert under Section 294 (3) Cr.P.C., and would be entitled to summon and examine any witness to establish the said report. In case on the basis of the evidence available on the record with the report under Section 173 (2) Cr.P.C., and the report of Department of

Forensic Medicine Annexure P-4, dated 22.9.2011, the trial Court suo moto or on an application of the complainant or State is satisfied that any additional charge is to be framed in the exercise of powers under Section 216 Cr.P.C., it will be open to the trial Court to exercise this power after giving fair opportunity to the accused who are facing trial before the said Court. Since the counsel for the petitioner has not pressed the prayer for further investigation under Section 173 (8) Cr.P.C., in view of the above relief having been granted, this petition is disposed of leaving the petitioner to avail the remedy as per the provisions of law mentioned herein above during the course of trial.”

Thereafter petitioner moved an application for recalling of the order dated 2.5.2013. The said application was disposed of by this Court vide order dated 29.7.2013. The operative part of the said order reads as under:-

“After hearing counsel for the petitioner, I am of the considered opinion that the application for recalling the order dated May 2, 2013 to withdraw the statement of the counsel appearing for the petitioner is not maintainable by challenging the counsel. The petition is dismissed.

However, in the interest of justice and taking into consideration the law in Samaj Parivartan Samudaya and others Vs. State of Karnataka and others, 2012(3) RCR (Criminal) 788 holding that the further investigation or even de novo trial is permitted at any

stage, it will be open to the petitioner to file an independent petition with relevant material available with the petitioner only in context to her prayer for further investigation under Section 173(8) Cr.P.C.

The dismissal of earlier petition on May 2, 2013 will not prejudice the right of the petitioner to file a fresh petition for further investigation by replacing on record the relevant material to satisfy the Court if the circumstances warrant indulgence by this Court for a direction for further investigation.

Safeguarding the above said interest of the petitioner, this petition for recalling the order dated May 2, 2013 is dismissed. It will be open to the petitioner to move appropriate application under Section 173(8) Cr.P.C. before the Investigating Agency/Trial Court/any other appropriate Authority. The statement earlier made by counsel for the petitioner not pressing the said plea will not hamper the right of the petitioner.”

The said order was challenged by the accused before the Apex Court. The Apex Court vide order dated 1.9.2014 (Annexure P-2) has held as under:-

“Heard learned counsel for the parties.

In the course of hearing, learned counsel for the respondents submitted that the report of the P.G.I. should be produced before the prosecution during the trial. The learned counsel for the petitioners has no objection.

In view of the aforesaid, the order passed by the

High Court is modified to the extent that the prosecution shall be permitted to tender the said document as a part of the evidence through a witness.

The special leave petition stands disposed of.”

Thereafter petitioner moved an application under Section 173(8) Cr.P.C. The said application was again disposed of by the Trial Court vide impugned order dated 24.9.2014. The Trial Court held that the Apex Court had already allowed the prosecution to examine the witness to prove the report of the P.G.I., therefore, no further interference was called for.

This Court vide order dated 29.7.2013 had permitted the petitioner to move the appropriate application under Section 173(8) Cr.P.C. and it was further held that the statement earlier made by the counsel for the petitioner would not hamper the rights of the petitioner. When the said order was challenged by the accused before the Apex Court, it appears that during the course of arguments, the petitioner submitted that report of P.G.I. should be allowed to be produced during trial. The said argument raised by the petitioner was not opposed by the accused. Consequently, the Apex Court modified the order passed by this Court dated 29.7.2013 and allowed the prosecution to tender the document/report of P.G.I. as a part of evidence by summoning a witness. Apparently, so far as the grievance of the petitioner for further investigation is concerned, the same stood satisfied in view of the order passed by the Apex Court (Annexure P-2). It is evident that there was no further grievance left with the petitioner to move a fresh application for further investigation under Section 173(8) Cr.P.C. Hence, the

impugned order passed by the Trial Court calls for no interference.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

October 01, 2015
Gurpreet